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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA, and NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION, Plaintiffs, v. WYETH HOLDINGS LLC, Defendant.	Civil Action No. 3: 16-cv-07219

NATURAL RESOURCES RESTORATION CONSENT DECREE

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I. BACKGROUND

A. The United States of America ("United States"), on behalf of the United States Department of Commerce ("Commerce"), acting by and through the National Oceanic and Atmospheric Administration ("NOAA") and the United States Department of the Interior ("DOI") acting by and through the United States Fish and Wildlife Service ("USFWS"), filed a complaint in this action against Wyeth Holdings LLC ("Settling Defendant") pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9607.

B. The United States in its complaint alleges that Settling Defendant is liable under Section 107 of CERCLA, 42 U.S.C. § 9607, for damages for, injury to, destruction of, or loss of Natural Resources in connection with the American Cyanamid Superfund Site ("Site"), as defined in Section IV of this Consent Decree, and the reasonable costs of assessment of Natural Resource Damages ("NRD").

C. Pursuant to 42 U.S.C. §§ 9607(f)(2) and 9615, 40 C.F.R. § 300.600 (herein referred to as the NCP); Executive Order 12580, 52 Fed. Reg. 2933 (January 23, 1987), as amended by Executive Order 12777, 56 Fed. Reg. 54757 (October 19. 1991), DOI and NOAA have been delegated authority to act on behalf of the public as the federal trustees for Natural Resources impacted by the release of hazardous substances at or from the Site.

D. New Jersey Department of Environmental Protection ("NJDEP"), filed a separate complaint alleging that Settling Defendant is liable under Section 107 of CERCLA, 42 U.S.C. § 9607, and the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 through -23.24 ("Spill Act") for reimbursement of costs and damages for injury to, destruction of, or loss of Natural Resources in connection with the Site, as defined in Section IV of this Consent Decree, and the reasonable costs of assessment in the Spill Act, N.J.S.A. 58:10-23.11 through -23.24 and CERCLA, 42 U.S.C. § 9601(16). The State of New Jersey, acting by and through NJDEP, is a natural resource Trustee pursuant to 40 C.F.R. § 300.600 and N.J.S.A. 58:10-23.11a.

E. NOAA, DOI, and NJDEP (the "Trustees") have engaged in natural resource injury studies and restoration planning, for which the Trustees incurred costs of assessment, to identify and quantify injuries to their shared trust resources. These injured resources may include, but are not limited to, birds, mammals, fish, surface water, sediments, and other wildlife, plants, and their supporting habitats, and associated services losses.

F. NJDEP intends to file in this Court a motion to consolidate its action in this matter, to which the United States and the Settling Defendant will not object.

G. This Consent Decree only addresses the Settling Defendant's liability for In-River Natural Resource Damages, as defined in Section IV (Definitions). By the terms of this Consent Decree, the Trustees reserve and retain their right to assert claims for Natural Resource Damages to other Natural Resources in connection with the release of hazardous substances at the Site. Settling Defendant reserves all of its rights and defenses with respect to any such claims.

H. Investigations at the Site by the United States Environmental Protection Agency ("EPA") and NJDEP concluded that waste storage and disposal impoundments at the Site contain or contained hazardous substances, including, but not limited to, volatile organic compounds ("VOCs"), semi-volatile organic compounds ("SVOCs"), and/or metals. Investigations also found that Site soils contain hazardous substances, including VOCs, SVOCs, polychlorinated biphenyls, and metals, and that groundwater underlying the Site contains metals and VOCs, such as benzene, chlorobenzene, ethylbenzene and xylene.

I. The United States, on behalf of EPA, and Settling Defendant signed a Consent Decree relating to the Site, which was entered by the United States District Court for the District of New Jersey on December 8, 2015. *United States v. Wyeth Holdings LLC*, 3:15-cv-07153-AET, Doc. # 8. (hereinafter, "2015 Consent Decree"). The United States, in the 2015 Consent Decree, reserved all rights against Settling Defendant for damages to, destruction of, or loss of Natural Resources, and for the costs of any natural resource damage assessment.

J. NJDEP and Settling Defendant entered into an Amended and Restated Administrative Consent Order, which became effective on December 23, 2015 (hereinafter, "2015 ARACO"). The 2015 ARACO replaced, nullified, and superseded prior administrative consent orders regarding the Site, and set forth the remaining remedial obligations of the Settling Defendant to NJDEP with respect to the Site. The 2015 ARACO, by its terms, did not affect or waive any claim of NJDEP against any party for damages for injuries to, destruction of, or loss of Natural Resources.

K. The Trustees analyzed EPA's investigation data and other available data to assess potential injuries to Natural Resources and their services related to release of hazardous substances at or near the Site, as well as releases of hazardous substances from the Site into the Raritan River, Cuckels Brook, and related tributaries in order to quantify the Settling Defendant's liability for In-River Natural Resource Damages. The Trustees outlined their assessment of injuries related to hazardous substance releases and proposed restoration projects in a draft Restoration Plan and Environmental Assessment, which was presented for public comment. The public comment period ended on June 10, 2016. After responding to the comments, the Restoration Plan and Environmental Assessment was finalized. The Trustees then entered into negotiations with the Settling Defendant and agreed, *inter alia*, to the restoration projects outlined in the Restoration Plan, and funding commitments, to be performed by the Settling Defendant. The requirements of the work to be performed by the Settling Defendant to resolve its liability for In-River Natural Resource Damages are set forth in the SOW attached at Appendix A, which is made enforceable under this Consent Decree.

L. Settling Defendant does not admit any liability to the United States or NJDEP arising out of the transactions or occurrences alleged in the complaints, nor does it acknowledge that the release or threatened release of hazardous substances at or from the Site has caused damages to, destruction of, or loss of Natural Resources.

M. The Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and implementation of this

Consent Decree will expedite the restoration of natural resources injured at or in connection with the Site and will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, it is hereby Ordered, Adjudged and Decreed:

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1345, and 1367 and 42 U.S.C. §§ 9607, and 9613(b). This Court also has personal jurisdiction over Settling Defendant. Venue is proper in this Court pursuant to 28 U.S.C. §§1391(b) and (c) because the Settling Defendant did business in and CERCLA releases occurred in this Judicial District. Solely for the purposes of this Consent Decree and the underlying complaints, Settling Defendant waives all objections and defenses that it may have to jurisdiction of the Court or to venue in this District. Settling Defendant shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

2. This Consent Decree is binding upon the United States, the State, and upon Settling Defendant and its successors and assigns. Any change in ownership or corporate status of the Settling Defendant including, but not limited to, any transfer of assets or real or personal property, shall in no way alter such Settling Defendant's responsibilities under this Consent Decree.

3. Settling Defendant shall provide a copy of this Consent Decree to each contractor hired to perform the Work required by this Consent Decree and to each person representing the Settling Defendant with respect to the Work, and shall condition all contracts entered into hereunder for performance of the Work, as defined below, on compliance with the terms of this Consent Decree. Settling Defendant or its contractor(s) shall provide written notice of the Consent Decree to all subcontractors hired to perform any portion of the Work required by this Consent Decree. Settling Defendant shall nonetheless be responsible for ensuring that its contractors and subcontractors perform the Work in accordance with the terms of this Consent Decree. With regard to the activities undertaken pursuant to this Consent Decree, each contractor and subcontractor shall be deemed to be in a contractual relationship with Settling Defendant within the meaning of Section 107(b)(3) of CERCLA, 42 U.S.C. § 9607(b)(3).

IV. DEFINITIONS

4. Unless otherwise expressly provided in this Consent Decree, terms used in this Consent Decree that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or its appendices, the following definitions shall apply solely for purposes of this Consent Decree:

"CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601-9675.

"Consent Decree" shall mean this Consent Decree and all appendices attached hereto (listed in Section XX). In the event of conflict between this Consent Decree and any appendix, this Consent Decree shall control.

"Day" or "day" shall mean a calendar day unless expressly stated to be a working day. The term "working day" shall mean a day other than a Saturday, Sunday, or federal or State holiday. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal or State holiday, the period shall run until the close of business of the next working day.

"DOI" shall mean the United States Department of the Interior, acting through the Fish and Wildlife Service, and its successor departments, agencies, or instrumentalities.

"DOJ" shall mean the United States Department of Justice and its successor departments, agencies, or instrumentalities.

"Effective Date" shall mean the date upon which this Consent Decree is entered by the Court as recorded on the Court docket, or, if the Court instead issues an order approving the Consent Decree, the date such order is recorded on the Court docket.

"EPA" shall mean the United States Environmental Protection Agency and its successor departments, agencies, or instrumentalities.

"Federal Natural Resource Trustees" shall mean the federal agencies designated pursuant to CERCLA and 40 C.F.R. § 300.600 as trustees for Natural Resources actually or potentially injured, destroyed or lost as a result of releases of hazardous substances at or from the Site, specifically, the DOI, acting by and through the USFWS, and the United States Department of Commerce, acting by and through NOAA.

"Fish and Habitat Survey Costs" shall mean costs incurred by the NJDEP and DOI to conduct fish and habitat monitoring associated with the removal of the Weston Causeway Dam in conjunction with NJDEP's Bureau of Freshwater Fisheries ongoing monitoring programs and will involve fish and habitat surveys prior to and after dam removal.

"Floodplain, Riparian, Upland, and Wetland NRD" shall mean injury to, destruction of, or loss of Natural Resources occurring on, in, or to any and all floodplains, upland, riparian, or wetland habitats, which includes areas that are intermittently wet and further includes, but is not limited to, injury to, destruction of, or loss of any organisms that use such habitat including species such as amphibians and birds, and the prey species that support them.

"Future Costs" shall mean all costs, including, but not limited to, direct and indirect costs that the United States and NJDEP incur in reviewing or developing plans, reports, and other deliverables submitted pursuant to this Consent Decree after September 30, 2015 for DOI, September 19, 2015, for NOAA, and June 24, 2016 for NJDEP, in overseeing and monitoring implementation of the Restoration Work, or otherwise implementing, overseeing, or enforcing this Consent Decree, including, but not limited to, payroll costs, contractor costs, travel costs, and laboratory costs. Future Costs shall also include the Trustees' Fish and Habitat Survey Costs. Future Costs does not include costs incurred by the Trustees for Natural Resource Damage assessment related to injury to, destruction of, or loss of Natural Resources not resolved by this Consent Decree.

"In-River NRD" shall mean injury to, destruction of, or loss of Natural Resources occurring wholly within the permanently and intermittently flowing water and its underlying sediment of those portions of the Raritan River, Cuckels Brook, and related tributaries that are adjacent to or downstream of the American Cyanamid Superfund Site. These Natural Resources include, but are not limited to, surface water, sediment, fish, benthic invertebrates, periphyton, and aquatic plants. In-River NRD shall not include "Floodplain, Riparian, Upland and Wetland NRD" defined above. The phrase "intermittently flowing water" does not include flood waters.

"Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

"Natural Resource" or "Natural Resources" is defined at CERCLA § 101(16), 42 U.S.C. § 9601(16).

"Natural Resource Damages," or NRD, for the purposes of this Consent Decree, means any damages for injury to, destruction of, loss of, loss of use of, or impairment of Natural Resources resulting from the release or threatened release or disposal or presence of hazardous substances at, from, or to the Site, including, but not limited to: (i) the costs of assessing such injury, destruction, loss, loss of use, or impairment; (ii) the costs of restoration, rehabilitation, or replacement of injured or lost Natural Resources or of acquisition of equivalent resources; and (iii) the costs of identifying and planning such restoration, rehabilitation, replacement or acquisition activities.

"NJDEP" shall mean the New Jersey Department of Environmental Protection and any successor departments, agencies, or instrumentalities.

"NOAA" shall mean the National Oceanic and Atmospheric Administration of the United States Department of Commerce and any successor departments, agencies, or instrumentalities.

"Paragraph" shall mean a portion of this Consent Decree identified by an Arabic numeral or an upper or lower case letter.

"Parties" shall mean the United States, NJDEP, and Settling Defendant.

"Past Costs" shall mean all unreimbursed costs that the Trustees incurred related to the In-River NRD or the Restoration Work through: September 30, 2015 for DOI, September 19, 2015, for NOAA, and June 24, 2016 for NJDEP. Such Past Costs include, but are not limited to, direct and indirect costs, related to Restoration Work, assessment costs, enforcement, attorneys' and consultants' fees and other litigation costs, as well as building/structure demolition, removal, grading, and planting performed by NJDEP to enhance existing upland in connection with the Restoration Work specific to the Weston Causeway Dam removal project. Past Costs further includes Interest on all such costs that has accrued from the Effective Date to the date of payment.

"Plaintiffs" shall mean the United States and NJDEP.

"Restoration Project 1" shall mean the Weston Causeway Dam Removal as described in the Scope of Work.

"Restoration Project 2" shall mean the Island Farm Weir Enhanced Fish Passage Design as described in the Scope of Work.

"Restoration Work" shall mean those activities specified in the Scope of Work which is incorporated at Appendix A.

"Scope of Work or "SOW" shall mean the scope of work incorporated at Appendix A.

"Section" shall mean a portion of this Consent Decree identified by a Roman numeral.

"Settling Defendant" shall mean Wyeth Holdings LLC.

"Site" shall mean the American Cyanamid Superfund Site, encompassing approximately 575 acres, located primarily in Bridgewater Township with a portion of the Site in Bound Brook Borough, Somerset County, New Jersey, which is depicted generally on a map attached in Appendix B, and its environs, which include the nearby Raritan River, Cuckels Brook, and related tributaries, and wherever else hazardous substance and releases at or from the Site have come to be located.

"State" shall mean the State of New Jersey.

"Supervising Contractor" shall mean the principal contractors retained by Settling Defendant to supervise and direct the implementation of the Restoration Work under this Consent Decree.

"Trustee Council" shall mean a council consisting of one representative of DOI, NOAA, and NJDEP that shall address and oversee all matters related to the Restoration Work under this Consent Decree, as per the terms of a Memorandum of Agreement ("MOA") among the Trustees.

"Trustees" or "Natural Resource Trustees" shall mean: the United States Department of Commerce, acting through the National Oceanic and Atmospheric Administration; the United States Department of the Interior, acting through the United States Fish and Wildlife Service; and the New Jersey Department of Environmental Protection.

"United States" shall mean the United States of America and each department, agency, and instrumentality of the United States, including the Department of Commence and Department of Interior.

"Work" shall mean all activities and obligations Settling Defendant is required to perform under this Consent Decree, including the work set forth in the SOW, except the activities required under Section XVII (Retention of Records).

V. GENERAL PROVISIONS

5. Objectives of the Parties. The objectives of the Parties in entering into this Consent Decree are: (i) to perform the Restoration Work; (ii) to reimburse natural resource damage assessment costs and costs related to the Restoration Work incurred by the Trustees, as provided in 42 U.S.C. § 9607(a); (iii) to resolve Settling Defendant's liability for In-River NRD as provided herein; and (iv) to avoid potentially costly and time-consuming litigation.

6. Commitments by Settling Defendant. Settling Defendant shall perform or fund the Restoration Projects I and II in accordance with this Consent Decree, the SOW, and all work plans and other plans, standards, specifications, and schedules set forth in this Consent Decree or developed by Settling Defendant and approved by the Trustee Council pursuant to this Consent Decree. Settling Defendant shall pay the United States and NJDEP Past Costs and Future Costs as provided in this Consent Decree.

7. Compliance With Applicable Law. All activities undertaken by Settling Defendant pursuant to this Consent Decree shall be performed in accordance with the requirements of all applicable federal and state laws and regulations. The activities conducted pursuant to this Consent Decree shall be deemed consistent with the NCP.

8. Permits. This Consent Decree is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation.

VI. PERFORMANCE OF RESTORATION WORK

9. Settling Defendant's Restoration Requirements. Settling Defendant shall fund and perform, or cause to be performed, the Restoration Work set forth in the SOW incorporated herein at Appendix A. Other than the Work as defined in and described further in this Consent Decree, this Consent Decree does not address or impose any remediation obligations on the Settling Defendant under the 2015 Consent Decree, the 2015 ARACO, and/or federal and State law. All required timelines in the SOW shall be met, unless the Parties agree in writing to an alternate timeframe Settling Defendant shall allow for and cooperate with monitoring and oversight of all Restoration Work by the Trustees, through the Trustee Council, established under Section VII (Trustee Coordination and Oversight).

10. Project Coordinator. No later than thirty (30) days after the Entry of this Consent Decree, Settling Defendant shall notify the Trustee Council, in writing, of the name, address, telephone number, and e-mail address of its designated Project Coordinator and Alternative Project

Coordinator. The persons so designated shall be responsible for coordinating the Restoration Work and shall have technical expertise sufficient to adequately manage and supervise all aspects of the Restoration Work. The Settling Defendant may change its Project Coordinator by providing written notice to the Trustee Council at least thirty (30) days prior to the change.

11. Selection of Supervising Contractors for Restoration Work.

a. All aspects of the Restoration Work shall be under the direction and supervision of at least one Supervising Contractor, as designated by Settling Defendant. Settling Defendant has selected and the Trustees have issued an authorization to proceed regarding hiring of the following person(s) as Supervising Contractor(s): MWH Global, Inc. If at any time hereafter, Settling Defendant proposes to change the Supervising Contractor(s), Settling Defendant shall give such notice to the Trustee Council and must obtain an authorization to proceed from the Trustee Council before the new Supervising Contractor(s) perform, direct, or supervise any Restoration Work under this Consent Decree.

b. If the Trustee Council disapproves a replacement Supervising Contractor, the Trustee Council will notify Settling Defendant in writing. Settling Defendant shall submit to the Trustee Council a list of contractors, including the qualifications of each contractor, that would be acceptable to Settling Defendant within 30 days after receipt of the Trustee Council's disapproval of the contractor previously proposed. The Trustee Council will provide written notice of the names of any contractor(s) that it disapproves and an authorization to proceed with respect to any of the other contractors. Settling Defendant may select any contractor from that list that is not disapproved and shall notify the Trustee Council of the name of the contractor selected within 21 days after the Trustee Council's authorization to proceed.

c. If the Trustee Council fails to provide written notice of its authorization to proceed or disapproval as provided in this Paragraph and this failure prevents Settling Defendant from meeting one or more deadlines in a plan approved by the Trustee Council pursuant to this Consent Decree, Settling Defendant may seek relief under Section IX (Force Majeure).

VII. TRUSTEE COORDINATION AND OVERSIGHT

12. Trustee Council. The Trustees shall address and oversee all matters related to the Restoration Work by consensus through the Trustee Council established by the Memorandum of Agreement.

13. The United States, NJDEP or the Settling Defendant, individually or collectively, may take any legal, administrative, or judicial actions appropriate to enforce the terms of this Consent Decree. The United States, NJDEP, the Trustee Council, and each of their respective representatives, shall be given access at all reasonable times to the locations being used by Settling Defendant to implement the Restoration Work, as well as all non-privileged documents relating to the Restoration Work, for the purpose of overseeing and/or monitoring the implementation of the Restoration Work.

VIII. PAYMENTS BY SETTLING DEFENDANT

14. Payments by Settling Defendant for Past Costs.

a. United States Past Costs: Within 60 days after the Effective Date, Settling Defendant shall pay $142,471.56, plus interest accruing from the Effective Date, to the United States to reimburse Past Costs incurred by the United States. Of this total amount:

(1) $32,315.63, plus interest, shall be applied to Past Costs incurred by DOI.

(2) $110,155.93, plus interest, shall be applied to Past Costs incurred by NOAA.

b. Instructions for Past Costs Payments to the United States: Past Costs Payments to the United States shall be made by Electronic Funds Transfer ("EFT") to the U.S. Department of Justice account, referencing DOJ Case Number 90-11-3-07250/2. Payments shall be made in accordance with instructions provided to Settling Defendant by the Financial Litigation Unit of the United States Attorney's Office for the District of New Jersey. Such instructions shall be provided to the Settling Defendant within two (2) days of the Effective Date. Any payments received by the Department of Justice after 4:00 p.m. (Eastern Time) will be credited on the next business day. The FLU shall provide the payment instructions to:

Wyeth Holdings LLC
100 Route 206 North
Peapack, NJ
ATTN: Russell Downey, m.s. 4-LLA-401
russell.g.downey@pfizer.com

on behalf of Settling Defendant. Settling Defendant may change the individual to receive payment instructions on its behalf by providing written notice of such change in accordance with Section XVIII (Notices and Submissions).

c. NJDEP Past Costs: Within 60 days after the Effective Date, Settling Defendant shall pay $41,891.43, (which includes $29,490 in demolition costs and other Past Costs), plus interest accruing from the Effective Date, to NJDEP to reimburse Past Costs incurred by the State.

d. Instructions for Past Costs Payments to the NJDEP: Past Costs Payments to the NJDEP shall be made by check payable to the "Treasurer, State of New Jersey" and submitted to:

New Jersey Department of Environmental Protection
Office of Natural Resource Restoration
P.O. Box 420
Trenton, New Jersey 08625-0420
ATTN: John N. Sacco

15. Payments by Settling Defendant for Future Costs and Stipulated Penalties. On a periodic basis, each Trustee will individually submit to Settling Defendant a bill for Future Costs with a cost summary with supporting documentation. Settling Defendant shall pay the Future Costs, plus interest, within sixty (60) days of receipt of each bill and cost summary. In addition, Settling Defendant shall pay Trustees' Fish and Habitat Survey Costs in the amount of $50,000, plus interest (if required pursuant to paragraph 16), within 60 days of the Effective Date. Of this $50,000, Settling Defendant shall pay: $15,000, plus interest (if required pursuant to paragraph 16), in accordance with the instructions for payment of Future Costs to the United States in Paragraph 15(a) below; and $35,000, plus interest (if required pursuant to paragraph 16), in accordance with the instructions for payment of Future Costs to NJDEP in Paragraph 15(b) below.

a. Instructions for Payments of Future Costs and Stipulated Penalties to the United States.

(1) Payment to DOI: Settling Defendant shall pay Future Costs incurred by DOI electronically according to instructions to be provided to Settling Defendant. Notification of payment shall be emailed to:

Department of the Interior
Natural Resource Damage Assessment and
Restoration Program
Attn: Bruce Nesslage, Restoration Fund Manager
1849 C Street, NW
Mail Stop 4449
Washington, D.C. 20240
bruce_nesslage@ios.doi.gov

and

Mark Barash, Esq.
U.S. Department of the Interior
Office of the Regional Solicitor
One Gateway Center
Suite 612
Newtown, MA 02458-2881
Mark.barash@sol.doi.gov

(2) Payment to NOAA: Settling Defendant shall pay Future Costs incurred by NOAA electronically according to instructions to be provided to Settling Defendant. Notification of payment shall be emailed to:

NOAA/U.S. Department of Commerce
NOAA Office of Response and Restoration
Attn: Kathy Salter, DARF Manager
1315 East-West Highway
Silver Spring, MD 20910-3281
Email: kathy.salter@noaa.gov

and

Kate Barfield
National Oceanic and Atmospheric Administration
Office of General Counsel Natural Resources
1315 East-West Highway
SSMC3# Room 15107
Silver Spring, MD 20910-3282
kate.barfield@noaa.gov

(3) Payment of Stipulated Penalties: Settling Defendant shall pay stipulated penalties electronically according to instructions to be provided to Settling Defendant. Notification of payment shall be made to:

NOAA/U.S. Department of Commerce
NOAA Office of Response and Restoration
Attn: Kathy Salter, DARF Manager
1315 East-West Highway
Silver Spring, MD 20910-3281
Email: kathy.salter@noaa.gov

and

Kate Barfield
National Oceanic and Atmospheric Administration
Office of General Counsel Natural Resources
1315 East-West Highway
SSMC3# Room 15107
Silver Spring, MD 20910-3282
kate.barfield@noaa.gov

b. Instructions for Payments of Future Costs and Stipulated Penalties to NJDEP. All payments for Future Costs and Stipulated Penalties to NJDEP shall be made by check payable to the "Treasurer, State of New Jersey" and submitted to:

New Jersey Department of Environmental Protection
Office of Natural Resource Restoration
P.O. Box 420
Trenton, New Jersey 08625-0420
ATTN: John N. Sacco

16. Interest. In the event that any payment for Past Costs or Future Costs required under this Section is not made by the date required, Settling Defendant shall pay Interest on the unpaid balance. The Interest to be paid on Past Costs under this Paragraph shall begin to accrue on the Effective Date. The Interest on Future Response Costs shall begin to accrue on the date of the bill, except that interest on the $50,000 payment for Fish and Habitat Survey costs shall begin to accrue 60 days after the Effective Date. The Interest shall accrue through the date of Settling Defendant's payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to Plaintiffs by virtue of Settling Defendant's failure to make timely payments under this Section including, but not limited to, payment of stipulated penalties pursuant to Paragraphs 28 or 29.

IX. FORCE MAJEURE

17. "Force majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of Settling Defendant, of any entity controlled by Settling Defendant, or of Settling Defendant's contractors that delays or prevents the performance of any obligation under this Consent Decree despite Settling Defendant's best efforts to fulfill the obligation. The requirement that Settling Defendant exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure and best efforts to address the effects of any potential force majeure (a) as it is occurring and (b) following the potential force majeure such that the delay and any adverse effects of the delay are minimized to the greatest extent possible. Force majeure does not include financial inability to complete the Work.

18. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree for which Settling Defendant intends or may intend to assert a claim of force majeure, Settling Defendant shall notify the Trustee Council's representative specified in Paragraph 62 orally or, in his or her absence, the Trustee Council's alternative representative, within seventy-two (72) hours of when Settling Defendant first knew that the event would likely cause a delay. Within five (5) business days thereafter, Settling Defendant shall provide in writing to the Trustee Council an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Settling Defendant's rationale for attributing such delay to a force majeure; and a statement as to whether, in the opinion of Settling Defendant, such event may cause or contribute to an endangerment to public health or welfare, or the environment. Settling Defendant shall include with any notice documentation supporting its claim that the delay was attributable to a force majeure. Settling Defendant shall be deemed to know of any circumstance of which Settling Defendant, any entity controlled by Settling Defendant, or Settling Defendant's

contractors knew or should have known. Failure to comply with the above requirements regarding an event shall preclude Settling Defendant from asserting any claim of force majeure regarding that event during the period of time of such failure to comply, provided, however, that if the Trustee Council, despite the late notice, is able to assess to its satisfaction whether the event is a force majeure under Paragraph 17 and whether Settling Defendant has exercised its best efforts under Paragraph 17, the Trustee Council may, in its unreviewable discretion, excuse in writing Settling Defendant's failure to submit timely notices under this Paragraph.

19. If the Trustee Council agrees that the delay or anticipated delay is attributable to a force majeure, the time for performance of the obligations under this Consent Decree that are affected by the force majeure will be extended by the Trustee Council for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure shall not, of itself, extend the time for performance of any other obligation. If the Trustee Council does not agree that the delay or anticipated delay has been or will be caused by a force majeure, the Trustee Council will notify Settling Defendant in writing of its decision. If the Trustee Council agrees that the delay is attributable to a force majeure, the Trustee Council will notify Settling Defendant in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure.

20. If Settling Defendant elects to invoke the dispute resolution procedures set forth in Section X (Dispute Resolution), it shall do so no later than 15 days after receipt of the Trustee Council's notice. In any such proceeding, Settling Defendant shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Settling Defendant complied with the requirements of Paragraphs 21 and 22. If Settling Defendant carries this burden, the delay at issue shall be deemed not to be a violation by Settling Defendant of the affected obligation of this Consent Decree identified to the Trustee Council and the Court.

X. DISPUTE RESOLUTION

21. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes regarding this Consent Decree. However, the procedures set forth in this Section shall not apply to actions by the United States or the NJDEP to enforce obligations of Settling Defendant that has not been disputed in accordance with this Section.

22. Any dispute regarding this Consent Decree shall in the first instance be the subject of informal negotiations between the parties to the dispute. The period for informal negotiations shall not exceed 20 days from the time the dispute arises, unless it is modified by written agreement of the parties to the dispute. The dispute shall be considered to have arisen when one party sends the other parties and the Trustee Council a written Notice of Dispute.

23. Statements of Position.

a. In the event that the parties cannot resolve a dispute by informal negotiations under the preceding Paragraph, then the position advanced by the Trustee Council shall be considered binding unless, within 30 days after the conclusion of the informal negotiation period, Settling Defendant invokes the formal dispute resolution procedures of this Section by serving on the United States, NJDEP, and Trustee Council a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by Settling Defendant. The Statement of Position shall specify Settling Defendant's position as to whether formal dispute resolution should proceed under Paragraph 24 (Record Review) or 25.

b. Within 30 days, unless extended by agreement of the parties, after receipt of Settling Defendant's Statement of Position, the Trustee Council will serve on Settling Defendant its Statement of Position, including, but not limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by the Trustee Council. The Trustee Council's Statement of Position shall include a statement as to whether formal dispute resolution should proceed under Paragraph 24 (Record Review) or Paragraph 25. Within 30 days after receipt of the Trustee Council's Statement of Position, Settling Defendant may submit a Reply.

c. If there is disagreement between the Trustee Council and Settling Defendant as to whether dispute resolution should proceed under Paragraph 24 (Record Review) or 25, the parties to the dispute shall follow the procedures set forth in the paragraph determined by the Trustee Council to be applicable. However, if Settling Defendant ultimately appeals to the Court to resolve the dispute, the Court shall determine which paragraph is applicable in accordance with the standards of applicability set forth in Paragraphs 24 and 25.

24. Record Review. Formal dispute resolution for disputes pertaining to the selection or adequacy of any Restoration Work and all other disputes that are accorded review on the administrative record under applicable principles of administrative law shall be conducted pursuant to the procedures set forth in this Paragraph. For purposes of this Paragraph, the adequacy of any Restoration Work includes, without limitation, the adequacy or appropriateness of plans, procedures to implement plans, or any other items requiring approval by the Trustee Council under this Consent Decree, and the adequacy of the performance of Restoration Work taken pursuant to this Consent Decree.

a. An administrative record of the dispute shall be maintained by the Trustee Council and shall, at a minimum, contain all statements of position, including supporting documentation, submitted pursuant to this Section. Where appropriate, the Trustee Council may allow submission of supplemental statements of position by the parties to the dispute.

b. The Trustee Council will issue a final administrative decision resolving the dispute based on the administrative record described in Paragraph 24.a. This decision shall be binding upon Settling Defendant, subject only to the right to seek judicial review pursuant to Paragraphs 24.c and 24.d.

c. Any administrative decision made by Trustee Council pursuant to Paragraph 24.b shall be reviewable by this Court, provided that a motion for judicial review of the decision is filed by Settling Defendant with the Court and served on all Parties within ten working days after receipt of the Trustee Council's decision. The motion shall include a description of the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of this Consent Decree. The United States and NJDEP may file a response to Settling Defendant's motion.

d. In proceedings on any dispute governed by this Paragraph, Settling Defendant shall have the burden of demonstrating that the decision of the Trustee Council is arbitrary and capricious or otherwise not in accordance with law. Judicial review of the Trustee Council's decision shall be on the administrative record compiled pursuant to Paragraph 24.a.

25. Formal dispute resolution for disputes that neither pertain to the selection or adequacy of any Restoration Work nor are otherwise accorded review on the administrative record under applicable principles of administrative law, shall be governed by this Paragraph.

a. Following receipt of Settling Defendant's Statement of Position submitted pursuant to Paragraph 23, the Trustee Council will issue a final decision resolving the dispute. The Trustee Council's decision shall be binding on Settling Defendant unless, within ten working days after receipt of the decision, Settling Defendant files with the Court and serves on the parties a motion for judicial review of the decision setting forth the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of the Consent Decree. The United States and NJDEP may file a response to Settling Defendant's motion.

b. Judicial review of any dispute governed by this Paragraph shall be governed by applicable principles of law.

26. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone, or affect in any way any obligation of Settling Defendant under this Consent Decree, not directly in dispute, unless the Trustee Council or the Court agrees otherwise. Stipulated penalties with respect to the disputed matter shall continue to accrue but payment shall be stayed pending resolution of the dispute as provided in Paragraph 35. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Consent Decree. In the event that Settling Defendant does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XI (Stipulated Penalties).

XI. STIPULATED PENALTIES

27. Settling Defendant shall be liable for stipulated penalties in the amounts set forth in Paragraphs 28 and 29 for failure to comply with the requirements of this Consent Decree specified below, unless excused under Section IX (Force Majeure). "Compliance" by Settling Defendant shall include completion of all payments and activities required under this Consent Decree, including the SOW, within the specified time schedules established by and approved under this Consent Decree.

28. Stipulated Penalty Amounts - Payment of Past Costs. The following stipulated penalties shall accrue per violation per day for the failure by Settling Defendant to pay Past Costs:

Penalty Per Violation Per Day	Period of Noncompliance
$400.00	1st through 14th day
$800.00	15th through 30th day
$1,650.00	31st day and beyond

29. Stipulated Penalty Amounts – Payment of Future Response Costs and Deliverables.

a. The following stipulated penalties shall accrue per violation per day for failure to timely submit Future Cost payments or the deliverables identified in Paragraph 29b:

Penalty Per Violation Per Day	Period of Noncompliance
$300.00	1st through 14th day
$600.00	15th through 30th day
$1,400.00	31st day and beyond

b. Compliance Milestones.

(1) Payment of Future Costs

(2) Submission of name of Project Coordinator

(3) Submittal of a Dam Removal Completion Report to Dam Safety within 24 months of receipt of the final required Dam Removal Permit

(4) Submittal of a revised Design Report for the selected fish passage alternative within three months of receiving the Trustee Council's contingent approval of the 90% Design report (SOW II.3.f/II.2.d).

30. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: (a) with respect to a decision by the Trustee Council under Paragraph 24.b or 25.a of Section X

(Dispute Resolution), during the period, if any, beginning on the 21st day after the date that Settling Defendant's reply to the Trustee Council's Statement of Position is received until the date that the Trustee Council issues a final decision regarding such dispute; or (b) with respect to judicial review by this Court of any dispute under Section X (Dispute Resolution), during the period, if any, beginning on the 31st day after the Court's receipt of the final submission regarding the dispute until the date that the Court issues a final decision regarding such dispute. Nothing in this Consent Decree shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

31. Following the determination by the United States or NJDEP, individually or jointly, that the Settling Defendant has failed to comply with one of the requirements of this Consent Decree listed above, the United States and/or NJDEP may give the Settling Defendant written notification of the same and describe the noncompliance. The United States and/or NJDEP may send the Settling Defendant a written demand for the payment of penalties. Penalties shall accrue and are due as provided in this Section regardless of whether the United States and/or NJDEP, as applicable, has notified the Settling Defendant of a violation.

32. Stipulated penalties shall be paid as follows: Stipulated penalties for failure to timely pay Past Costs or Future Costs shall be paid to the government that did not timely receive payment. For all other stipulated penalties, fifty percent (50%) shall be paid to the United States in accordance with payment instructions provided by the Financial Litigation Unit of the United States Attorney's Office for the District of New Jersey, and shall be deposited in the United States Treasury; and fifty percent (50%) shall be paid to the NJDEP, in accordance with the instructions set forth in Paragraph 15.

33. In the event the Settling Defendant fails to pay stipulated penalties when due, the United States and/or NJDEP may institute a legal proceeding to collect such penalties, as well as Interest accruing on any unpaid balance, as provided by law.

34. All penalties due under this Section shall be due and payable within thirty (30) days of the Settling Defendant's receipt of a demand for payment from the United States and/or NJDEP, unless the Settling Defendant invokes dispute resolution under Section X of this Consent Decree.

35. In that case, stipulated penalties shall continue to accrue as provided in this Section, but need not be paid until the following:

a. If the dispute is resolved by agreement, accrued penalties agreed to be owed shall be paid to the United States and NJDEP within thirty (30) days of the agreement;

b. If the dispute is appealed to this Court and the United States and/or NJDEP prevail in whole or in part, the Setting Defendant shall pay all accrued penalties determined by the Court to be owed to the United States and NJDEP within thirty (30) days of receipt of the Court's decision or order, except as provided for in Paragraph 35c; or

c. If this Court's decision is appealed by any Party, Settling Defendant shall pay all accrued penalties determined by this Court to be owed to the United States and/or NJDEP into an interest-bearing escrow account, established at a duly chartered bank or trust company that is insured by the FDIC, within 60 days after receipt of the Court's decision or order. Penalties shall be paid into this account as they continue to accrue, at least every 60 days. Within 15 days after receipt of the final appellate court decision, the escrow agent shall pay the balance of the account to the United States and/or NJDEP or to Settling Defendant to the extent that they prevail.

36. If Settling Defendant fails to pay stipulated penalties when due, Settling Defendant shall pay Interest on the unpaid stipulated penalties as follows: (a) if Settling Defendant has timely invoked dispute resolution such that the obligation to pay stipulated penalties has been stayed pending the outcome of dispute resolution, Interest shall accrue from the date stipulated penalties are due pursuant to Paragraph 35 until the date of payment; and (b) if Settling Defendant fails to timely invoke dispute resolution, Interest shall accrue from the date of demand under Paragraph 34 until the date of payment. If Settling Defendant fails to pay stipulated penalties and Interest when due, the United States may institute proceedings to collect the penalties and Interest.

37. Nothing in this Consent Decree shall be construed as prohibiting, altering, or in any way limiting the ability of the United States or NJDEP to seek any other remedies or sanctions available by virtue of the Settling Defendant's violation of this Consent Decree.

38. Notwithstanding any other provision of this Section, the United States and/or NJDEP, in their respective unreviewable discretions, may waive any portion of stipulated penalties owed to it that have accrued pursuant to this Consent Decree.

XII. COVENANTS BY THE UNITED STATES AND THE NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION

39. Covenant for Settling Defendant by United States. Except as specifically provided in Section XIII (Reservation of Rights by Plaintiffs), the United States covenants not to sue or take administrative action against Settling Defendant for Natural Resource Damages pursuant to Section 107(a) of CERCLA for (a) Past Costs; (b) the In-River NRD resulting from releases of hazardous substances at, from or to the American Cyanamid Superfund Site; and (c) Future Costs. These covenants not to sue shall take effect upon the Effective Date. These covenants not to sue are conditioned upon the satisfactory performance by Settling Defendant of its obligations under this Consent Decree, including the payment of Past Costs, Future Costs, the performance of the Restoration Work, payment of all amounts that may become due to the United States under Section XI (Stipulated Penalties), and payment of any Interest owed to the United States under this Consent Decree. These covenants not to sue extend only to the Settling Defendant and its successors and do not extend to any other person. These covenants also do not affect the covenants provided in the 2015 Consent Decree.

40. Covenants for Settling Defendant by NJDEP. In consideration of the actions that have been and will be performed and the payments that will be made by Settling Defendant under this Consent Decree, and except as specifically provided in Section XIII (Reservation of Rights by

Plaintiffs), NJDEP covenants not to sue or take administrative action against Settling Defendant for Natural Resource Damages pursuant to Section 107(a) of CERCLA and the Spill Act for (a) Past Costs; (b) In-River NRD resulting from releases of hazardous substances at, from or to the American Cyanamid Superfund Site and (c) Future Costs. This covenant not to sue shall take effect upon the Effective Date. These covenants not to sue are conditioned upon the satisfactory performance by Settling Defendant of its obligations under this Consent Decree, including the payment of Past Costs, Future Costs, the performance of the Restoration Work, payment of all amounts that may become due to NJDEP under Section XI (Stipulated Penalties), and payment of any Interest owed to NJDEP under this Consent Decree. These covenants not to sue extend only to the Settling Defendant, its successors and assigns, and do not extend to any other person. These covenants do not affect the covenants provided in the 2015 ARACO.

XIII. RESERVATION OF RIGHTS BY PLAINTIFFS

41. General Reservations of Rights by the United States and NJDEP. The United States and NJDEP reserve, and this Consent Decree is without prejudice to, all rights against Settling Defendant with respect to all matters not expressly included within the United States' and NJDEP's respective covenants. These reservations do not affect the reservations provided in the 2015 Consent Decree and the 2015 ARACO, except as provided in this Consent Decree.

42. Notwithstanding any other provision of this Consent Decree, the United States and NJDEP reserve all rights against Settling Defendant with respect to all matters other than those specifically expressed in Paragraphs 39 and 40; for the avoidance of doubt, this reservation of rights specifically includes:

a. liability for failure by Settling Defendant to meet a requirement of this Consent Decree;

b. liability, except for liability for In-River NRD, arising from the past, present, or future disposal, release, or threat of release of hazardous substances from: (1) outside the Site; or (2) from the Site, including liability for Floodplain, Riparian, Upland, and Wetland NRD;

c. criminal liability;

d. liability for violations of federal or state law that occur during or after implementation of the Restoration Work;

e. liability to reimburse response costs or to implement response actions under CERCLA, the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. sec. 6901, *et. seq.*, or the Spill Act, N.J.S.A. 58:10-23.11 through 23.24 in connection with the Site, subject to the covenants not to sue and reservations of rights applicable to the United States in the 2015 Consent Decree and the 2015 ARACO; and

f. liability for costs that the United States or NJDEP incurs related to the Site but that are not within the definition of Natural Resource Damages.

43. Special Reservations Regarding Natural Resource Damages. Notwithstanding any other provision of this Consent Decree, the Trustees each reserve the right to institute proceedings against Settling Defendant in this action or in a new action seeking recovery of Natural Resource Damages, if conditions or information relating to the Site, not known to the Trustees at the time of lodging of this Decree, are discovered that, together with any other relevant information, indicate that there is injury to, destruction of, or loss of Natural Resources of a type unknown, or of a magnitude substantially greater than was known by the Trustees as of the date of lodging of this Decree. Information and conditions known to the Trustees with respect to the Sites as of the date of lodging of this Decree shall include only the information and conditions set forth in the NOAA, DOI, or NJDEP files for the Site as of the date of lodging of this Decree.

XIV. COVENANTS BY SETTLING DEFENDANT

44. Covenants by Settling Defendant. Settling Defendant covenants not to sue and agrees not to assert any claims or causes of action against the United States or the State with respect to Natural Resource Damages or this Consent Decree including, but not limited to, any claim against the United States or the State, including any department, agency, or instrumentality of the United States and State, under CERCLA Sections 107 or 113 or the Spill Act relating to Natural Resource Damages.

45. Except as provided in Paragraph 55 (Res Judicata and Other Defenses), the covenants in this Section shall not apply if the United States or the State brings a cause of action on behalf of their respective Trustees or issues an order pursuant to any of the reservations in Section XIII (Reservation of Rights by Plaintiffs), other than in Paragraphs 42.a (claims for failure to meet a requirement of the Consent Decree), 42.c (criminal liability), and 42.d (violations of federal/state law during or after implementation of the Restoration Work), but only to the extent that Settling Defendant's claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

46. Settling Defendant's Reservations:

a. With Respect to Claims Against the United States. Settling Defendant reserves, and this Consent Decree is without prejudice to, claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the United States Code, and brought pursuant to any statute other than CERCLA or RCRA and for which the waiver of sovereign immunity is found in a statute other than CERCLA or RCRA, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the United States or the State, as that term is defined in 28 U.S.C. § 2671, while acting within the scope of his or her office or employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. However, the foregoing shall not include any claim based on the Trustees' selection of Restoration Projects 1 and 2, or the oversight or approval of the Settling Defendant's deliverables or activities.

b. With Respect to Claims Against the State. Settling Defendant reserves, and this Consent Decree is without prejudice to, claims against the State, subject to the New Jersey Tort Claims Act, N.J.S.A. 59:1-1 through -12-3; the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1 through 13-10; the New Jersey Constitution, N.J. Const. art. VIII, §2, ¶2; or any other applicable provision of law, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any State employee while acting within the scope of his or her office or employment under circumstances where the State, if a private person, would be liable to the claimant. Any such claim, however, shall not include a claim for any damages caused, in whole or in part, by the act or omission of any person, including any contractor, who is not a State employee as that term is defined in N.J.S.A. 59:1-3; nor shall any such claim concern the Site, including the Trustees' selection of Restoration Projects 1 and 2, or the oversight or approval of the Settling Defendant's deliverables or activities. The foregoing applies only to claims that the Settling Defendant may bring pursuant to any statute other than the Spill Act, and for which the waiver of sovereign immunity is found in a statute other than the Spill Act.

47. Nothing in this Consent Decree shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

48. Nothing in this Consent Decree shall be deemed to constitute preauthorization of a claim against the Spill Fund within the meaning of N.J.S.A. 58:10-23.11k. or N.J.A.C. 7:1J, or the Sanitary Landfill Fund within the meaning of N.J.S.A. 13:1E-107 or N.J.A.C. 7:1I.

XV. EFFECT OF SETTLEMENT; CONTRIBUTION

49. Nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. Each of the Parties expressly reserves any and all rights (including, but not limited to, pursuant to Section 113 of CERCLA, 42 U.S.C. § 9613), defenses, claims, demands, and causes of action that each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto. Nothing in this Consent Decree diminishes the right of the United States, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)-(3) or NJDEP pursuant to the Spill Act, to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2) or the Spill Act.

50. The Parties agree, and by entering this Consent Decree this Court finds, that this Consent Decree constitutes a judicially approved settlement for purposes of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2) and the Spill Act, and that the Settling Defendant is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, and the Spill Act, N.J.S.A. 58:10-23.11f.a.(2)(a), or as may be otherwise provided by law, for "matters addressed" in this Consent Decree. Settling Defendant shall, with respect to any suit or claim brought by it for matters related to this Consent Decree, notify the United States and NJDEP in writing no later than 60 days prior to the initiation of such suit or claim.

51. When entered, this Consent Decree will constitute a judicially approved settlement within the meaning of the Spill Act, specifically, N.J.S.A. 58:10-23.11f.a.(2)(b), for the purpose of providing protection to the Settling Defendant from contribution actions. The Parties agree, and by entering this Consent Decree this Court finds, Settling Defendant is entitled, upon fully satisfying its obligations under this Consent Decree, to protection from contribution actions or claims under the Spill Act for matters addressed in this Consent Decree.

52. In order for the Settling Defendant to obtain protection under the Spill Act, N.J.S.A. 58:10-23.11.f.b., from contribution claims concerning the matters addressed in this Consent Decree, NJDEP published notice of this Consent Decree in the New Jersey Register and on NJDEP's website on October 17, 2016, in accordance with N.J.S.A. 58:10-23.11e.2. Such notice included the following information:

a. the caption of this case;
b. the name and location of the American Cyanamid Superfund Site;
c. the name of the Settling Defendant;
d. a summary of the terms of this Consent Decree; and
e. there are 60 days to submit comments for this Consent Decree.

53. NJDEP, in accordance with N.J.S.A. 58:10-23.11e2, arranged for written notice of the Consent Decree to all other potentially responsible parties of whom NJDEP had notice as of the date NJDEP published notice of the proposed settlement in this matter in the New Jersey Register in accordance with paragraph 52 above.

54. Settling Defendant shall, with respect to any suit or claim brought against it for matters related to this Consent Decree, notify in writing the United States and NJDEP within 10 days after service of the complaint on Settling Defendant. In addition, Settling Defendant shall notify the United States and NJDEP within 10 days after service or receipt of any Motion for Summary Judgment and within 10 days after receipt of any order from a court setting a case for trial. However, the failure to provide such notice within the prescribed time periods shall not affect Settling Defendant's right to contribution protection.

55. Res Judicata and Other Defenses. In any subsequent administrative or judicial proceeding initiated by the United States and/or the NJDEP for injunctive relief or recovery of response costs, cleanup and removal costs, or Natural Resource Damages reserved in Paragraphs 41, 42, and 43, or other appropriate relief relating to the Site, Settling Defendant shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States and/or the NJDEP in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenants not to sue set forth in Section XII (Covenants by the United States and NJDEP).

XVI. ACCESS TO INFORMATION

56. Settling Defendant shall provide to the United States and NJDEP, including the Trustee Council, upon request, copies of all non-privileged records, reports, documents, and other information (including records, reports, documents, and other information in electronic form) (hereinafter referred to as "Records") within its possession or control or that of its contractors or agents relating to implementation of this Consent Decree, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information regarding the Restoration Work. Settling Defendant shall also make available to the United States and NJDEP, including the Trustee Council, for purposes of investigation, information gathering, or testimony, its employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Restoration Work.

57. Business Confidential and Privileged Documents.

a. Settling Defendant may assert business confidentiality claims covering part or all of the Records submitted to the United States and NJDEP under this Consent Decree to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Records determined to be confidential by the United States and/or NJDEP will be afforded the protection by the United States and/or NJDEP, as applicable, specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies Records when they are submitted to the United States or NJDEP, or if the United States and/or NJDEP has notified Settling Defendant that the Records are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such Records without further notice to Settling Defendant.

b. Settling Defendant may assert that certain Records are privileged under the attorney-client privilege or any other privilege recognized by federal or state law. If Settling Defendant asserts such a privilege in lieu of providing Records, it shall provide the United States and NJDEP with the following: (1) the title of the Record; (2) the date of the Record; (3) the name, title, affiliation (e.g., company or firm), and address of the author of the Record; (4) the name and title of each addressee and recipient; (5) a description of the contents of the Record; and (6) the privilege asserted by Settling Defendant. If a claim of privilege applies only to a portion of a Record, the Record shall be provided to the United States and NJDEP in redacted form to mask the privileged portion only. Settling Defendant shall retain all Records that they claim to be privileged until the United States and NJDEP have had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in Settling Defendant's favor.

c. No Records created or generated that are required to be submitted to the United States and NJDEP, including the Trustee Council, pursuant to the requirements of this Consent Decree shall be withheld from the United States or NJDEP on the grounds that they are privileged or confidential.

58. No claim of confidentiality or privilege shall be made with respect to any data, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any or any other purely factual information related to the Work or performance of the Work. Nothing in this Paragraph prevents Settling Defendant from making a claim of confidentiality or privilege with respect to any analysis, assessment or review of such data or factual information.

XVII. RETENTION OF RECORDS

59. Retention of Records

a. Until 10 years after Settling Defendant's receipt of the Project Completion Certificate pursuant to the SOW, Settling Defendant shall preserve and retain all non-identical copies of Records (including Records in electronic form) now in its possession or control or that come into its possession or control that relate in any manner to its liability under CERCLA or the Spill Act with respect to the Site, provided, however, that Settling Defendant who is potentially liable as an owner or operator of the Site must retain, in addition, all Records that relate to the liability of any other person under CERCLA or the Spill Act with respect to the Site. Settling Defendant must also retain, and instruct its contractors and agents to preserve, for the same period of time specified above all non-identical copies of the last draft or final version of any Records (including Records in electronic form) now in its possession or control or that come into its possession or control that relate in any manner to the performance of the Restoration Work, provided, however, that Settling Defendant (and its contractors and agents) must retain, in addition, copies of all data generated that are required to be submitted to the Trustee Council during the performance of the Work and not contained in the aforementioned Records required to be retained. Each of the above record retention requirements shall apply regardless of any corporate retention policy to the contrary.

b. Settling Defendant's obligations with respect to retaining Records do not apply to any electronic backup tapes or files that are created, deleted, or overwritten in compliance with Settling Defendant's standard document retention and disposition practices.

60. At the conclusion of this record retention period, Settling Defendant shall notify the Trustees at least 90 days prior to the destruction of any such Records, and, upon request by a Trustee, Settling Defendant shall deliver any such Records to that Trustee. Settling Defendant may assert that certain Records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Defendant asserts such a privilege, it shall provide the Trustees with the following: (a) the title of the Record; (b) the date of the Record; (c) the name, title, affiliation (e.g., company or firm), and address of the author of the Record; (d) the name and title of each addressee and recipient; (e) a description of the subject of the Record; and (f) the privilege asserted by Settling Defendant. If a claim of privilege applies only to a portion of a Record, the Record shall be provided to the Trustees in redacted form to mask the privileged portion only. Settling Defendant shall retain all Records that it claims to be privileged until the United States has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in Settling Defendant's favor. However, no Records

created or generated pursuant to the requirements of this Consent Decree shall be withheld on the grounds that they are privileged or confidential.

61. Settling Defendant certifies that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed, or otherwise disposed of any Records (other than identical copies) relating to its potential liability regarding the Site since January 1, 2009 and that it has fully complied with any and all EPA and NJDEP requests for information regarding the Site pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927 and the Spill Act.

XVIII. NOTICES AND SUBMISSIONS

62. Whenever, under the terms of this Consent Decree, written notice is required to be given or a report or other document is required to be sent by one Party to another or to the Trustee Council, it shall be directed, as applicable, to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. All notices and submissions shall be considered effective upon receipt, unless otherwise provided. Written notice as specified in this Section shall constitute complete satisfaction of any written notice requirement of the Consent Decree, with respect to the United States, the State, and Settling Defendant, respectively. Notices required to be sent only to DOI, NOAA, NJDEP or the Trustee Council, do not need to be sent to the U.S. Department of Justice and New Jersey Attorney General's Office.

As to the United States:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
Re: DJ # 90-11-3-07250/2

As to DOI

Mark Barash
United States Department of the Interior
Office of the Solicitor
One Gateway Center
Suite 612
Newton, MA 02458
mark.barash@sol.doi.gov

As to NOAA:

Carl Alderson
NOAA Restoration Center Field Office
JJ Howard National Marine Fisheries Science Center
74 Magruder Road, Highlands, NJ 07732
Carl.Alderson@noaa.gov

As to NJDEP:

J. Mark Walters, Project Manager
Department of Environmental Protection
Office of Natural Resource Restoration
Mail Code 501-1
P.O. Box 420
Trenton, New Jersey 08625-0420
mark.walters@dep.nj.gov

and

Section Chief
Environmental Enforcement Section
Department of Law and Public Safety
Division of Law
Richard J. Hughes Justice Complex
25 Market Street
P.O. Box 093
Trenton, NJ 08625-0093
Ph. (609) 633-8713

As to the Trustee Council

J. Mark Walters, Project Manager
American Cyanamid Site Trustee Council
Department of Environmental Protection
Office of Natural Resource Restoration
Mail Code 501-1
P.O. Box 420
Trenton, New Jersey 08625-0420
mark.walters@dep.nj.gov

As to Settling Defendant:

Russell Downey, Wyeth Holdings LLC
100 Route 206 North
Peapack, NJ
M.S. 4-LLA-401
russell.g.downey@pfizer.com

XIX. RETENTION OF JURISDICTION

63. This Court retains jurisdiction over both the subject matter of this Consent Decree and Settling Defendant for the duration of the performance of the terms and provisions of this Consent Decree for the purpose of enabling any of the Parties to apply to the Court at any time for such further order, direction, and relief as may be necessary or appropriate for the

construction or modification of this Consent Decree, or to effectuate or enforce compliance with its terms, or to resolve disputes in accordance with Section X (Dispute Resolution).

XX. APPENDICES

64. The following appendices are attached to and incorporated into this Consent Decree:

"Appendix A" is the Scope of Work.

"Appendix B" is a map of areas of the Site that are in the general vicinity of the American Cyanamid Superfund Site.

XXI. MODIFICATION

65. Material modifications to this Consent Decree, including the SOW, shall be in writing, signed by the Parties, and shall be effective upon approval of the Court. Nothing in this Consent Decree shall prohibit non-material modifications to the Consent Decree, including the SOW, based upon mutual agreement of the Parties. A modification to the SOW shall be considered material if it fundamentally alters a basic feature of the Restoration Work.

66. Nothing in this Consent Decree shall be deemed to alter the Court's power to enforce, supervise, or approve modifications to this Consent Decree.

XXII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

67. This Consent Decree shall be lodged with the Court for a period of not less than 60 days for public notice and comment. The United States and NJDEP reserve the right to withdraw or withhold their consent if the comments regarding the Consent Decree disclose facts or considerations that indicate that the Consent Decree is inappropriate, improper, or inadequate. Settling Defendant consents to the entry of this Consent Decree without further notice.

68. If for any reason the Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any Party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

XXIII. SIGNATORIES/SERVICE

69. Each undersigned representative of the Settling Defendant to this Consent Decree, the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice, or his designee, the Acting Attorney General of New Jersey and the Assistant Commissioner for Natural and Historic Resources for NJDEP, certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind such Party to this document.

70. Provided this Consent Decree is not in any way modified or otherwise altered following Settling Defendant's execution, Settling Defendant agrees not to oppose entry of this Consent

Decree by this Court or to challenge any provision of this Consent Decree unless the United States and NJDEP have notified Settling Defendant in writing that they no longer support entry of the Consent Decree.

71. Settling Defendant shall identify, on the attached signature page, the name, address, and telephone number of an agent who is authorized to accept service of process by mail on behalf of that Party with respect to all matters arising under or relating to this Consent Decree. Settling Defendant agrees to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including, but not limited to, service of a summons. Settling Defendant need not file an answer to the complaint in this action unless or until the Court expressly declines to enter this Consent Decree.

XXIV. FINAL JUDGMENT

72. This Consent Decree and its appendices constitute the final, complete, and exclusive agreement and understanding among the Parties regarding the settlement embodied in the Consent Decree. The Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Consent Decree.

73. Upon entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment between and among the United States, NJDEP, and Settling Defendant. The Court enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

SO ORDERED THIS 1st DAY OF February 2017.

Anne E Thompson

United States District Judge

Signature Page for Natural Resource Restoration Consent Decree regarding the American Cyanamid Superfund Site

FOR THE UNITED STATES OF AMERICA:

JOHN C. CRUDEN
Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice
Washington, D.C. 20530

DAVID L. GORDON
Senior Counsel
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611

PAUL J. FISHMAN
United States Attorney
District of New Jersey

ALLAN URGENT
Assistant United States Attorney
District of New Jersey

Signature Page for Natural Resource Restoration Consent Decree regarding the American Cyanamid Superfund Site

NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION

Date: 9/9/16

By: Rich Boornazian

Rich Boornazian, Assistant Commissioner
Natural and Historic Resources

Signature Page for Natural Resource Restoration Consent Decree regarding the American Cyanamid Superfund Site

CHRISTOPHER S. PORRINO
ATTORNEY GENERAL OF NEW JERSEY

Date: 09/16/2016

By: ______________________
A. Paul Stofa
Deputy Attorney General

Signature Page for Natural Resource Restoration Consent Decree regarding the American Cyanamid Superfund Site

FOR WYETH HOLDINGS, LLC

Date

Signature:

Print Name: Douglas M. Lankler

Title: Vice President

Address: Wyeth Holdings LLC c/o Pfizer Inc.
235 East 42nd Street
New York, NY 10017

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name (print): C T Corporation System

Address: 1536 Main Street
Readfield, ME 04355